

BALL JANIK LLP

A T T O R N E Y S

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207323

A

KARL MORELL

kmorell@bjllp.com

February 28, 2003

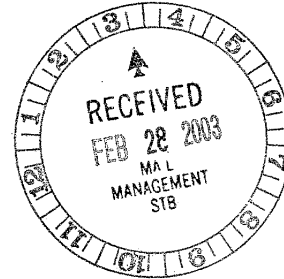
BY HAND DELIVERY

Victoria Rutson
Chief
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, N.W. - Room 504
Washington, DC 20423

ENTERED
Office of Proceedings

FEB 28 2003

Part of
Public Record



Re: STB Docket No. AB-603 (Sub-No. 1X), V and S Railway, Inc.--
Abandonment Exemption--In Barber County, Kansas

Dear Ms. Rutson:

Attached please find 10 copies of the Environmental Report and Historic Report in the above-captioned matter. V and S Railway, Inc., expects to file its Petition for Exemption in this matter on or shortly after March 20, 2003.

Sincerely,

Karl Morell

Enclosures

207323

EXHIBIT B

ENVIRONMENTAL REPORT

ENTERED
Office of Proceedings

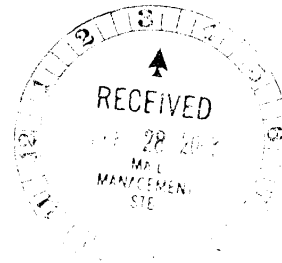
(49 C.F.R. 1105.7)

FEB 28 2003

Docket No. AB-603 (Sub-No. 1X)

Part of
Public Record

V AND S RAILWAY, INC.
--ABANDONMENT EXEMPTION--
IN BARBER COUNTY, KANSAS



(1) Proposed Action and Alternatives. Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

V and S Railway, Inc. ("VSR"), proposes to abandon the 20-mile section of its rail line located between milepost 21.0,¹ at Medicine Lodge, and milepost 41.0, at Sun City, in Barber County, Kansas (the "Line"). Upon receipt of abandonment authority, VSR intends to remove the rail, track material, and crossies. There are currently no plans to remove any of the bridge structures along the Line.

VSR acquired the Line in 2000 from Central Kansas Railway, L.L.C.² The only traffic that has moved over the Line since it was acquired by VSR is gypsum rock. In December of 2000, VSR handled 24 carloads; during 2001, it handled 636 carloads; and between January 1st

¹ At the time VSR sent out its consultation letters, it had planned on abandoning its rail from milepost 20.66. Since that time, VSR has changed its mind and now intends on keeping active the segment between milepost 20.66 and milepost 21.0 in order to preserve the option of serving a potential customer located on that segment.

² See STB Docket No. 33964, *V and S Railway, Inc. – Acquisition and Operation Exemption – Central Kansas Railway, L.L.C.* (not printed), served December 7, 2000.

and April 30, 2002, it handled 217 carloads. Since April 30, 2002, no local traffic has moved over the Line. Since the Line is stub-ended, no overhead traffic moves over the Line.

The Line has had limited traffic in recent years and no traffic in almost a year. In addition, very little maintenance has been performed. Therefore, the proposed abandonment will have limited impact on rail freight operations and maintenance practices on the Line. Because of the low traffic volume on the Line in recent years, VSR was incurring substantial operating losses on the Line. The Line is in poor condition. Significant rehabilitation and maintenance costs will be necessary in the near future in order to continue rail operations over the Line. Given that no traffic has moved in nearly a year and given the low volume of traffic in previous years, there is no possibility that these expenditures can be recovered.

The only alternative to abandonment would be not to abandon the Line and forcing VSR to pass the opportunity costs of retaining the Line to other VSR customers. This would not be a prudent use of carrier resources.

A map of the proposed abandonment is attached hereto as Exhibit 1.

(2) Transportation System. Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

No passenger traffic will be diverted to other modes as a result of the proposed abandonment. No local traffic has been handled on the Line in nearly a year and the Line is not capable of handling overhead traffic. Consequently, the proposed abandonment will have no adverse effects on regional or local transportation systems and patterns.

(3) Land Use. (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies. (ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land. (iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by 1105.9. (iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10905 and explain why.

(i) VSR is confident that the proposed abandonment is consistent with existing land use plans. VSR contacted the Barber County Board of Commissioners. See Exhibit 2. To date, no response to this inquiry has been received. A copy of this Report has been mailed to the appropriate local and state agencies for their information and comment.

(ii) The proposed abandonment will not have any detrimental effect on any prime agricultural land. VSR notified the U.S. Soil Conservation Service of the proposed abandonment and requested assistance in identifying any potential effects on prime agricultural land. See Exhibit 3. According to the Soil Conservation Service, the proposed abandonment will have “no negative impacts to important farmland” or “adverse environmental effects...” See Exhibit 3. A copy of this Report is being supplied to the USDA Soil Conservation Service for its information and further comment.

(iii) The Line does not pass through a designated coastal zone.

(iv) The right-of-way involved does not appear to be suitable for alternative public use other than a recreational trail since it is located in a rural, sparsely populated area. To date, no state or local entity has expressed an interest in the right-of-way.

(4) Energy. (i) Describe the effect of the proposed action on transportation of energy resources. (ii) Describe the effect of the proposed action on recyclable commodities. (iii) State

whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why. (iv) If the proposed action will cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) an average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

(i) The proposed abandonment will have no effect on the transportation of energy resources.

(ii) The proposed abandonment will have no effect on the transportation of recyclable commodities.

(iii) The proposed abandonment will have no effect on overall energy efficiency as no local traffic has been handled on the Line in nearly a year and the Line is not capable of handling overhead traffic.

(iv) The proposed abandonment will not cause diversions of rail traffic to motor carriage, since no local traffic has been handled in nearly a year and the Line is not capable of handling overhead traffic.

(5) Air. (i) If the proposed action will result in either: (A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (B) an increase in rail yard activity of at least 100 percent (measured by carload activity), or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. § 10901 (or § 10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in sub-section (5)(i)(A) will apply. (ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either: (A) an increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line; (B) an increase in rail yard activity of at least 20 percent (measured by carload activity); or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505), or a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply. (iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

(i) The proposed abandonment will not result in meeting or exceeding the specified thresholds.

(ii) The proposed abandonment will not result in meeting or exceeding the specified thresholds.

(iii) The proposed abandonment will not affect the transportation of ozone depleting materials.

(6) Noise. If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause: (i) an incremental increase in noise levels of three decibels Ldn or more; or (ii) an increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

Not applicable

(7) Safety. (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings). (ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials. (iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

(i) The proposed abandonment will have no detrimental effects on public health and safety. The removal of grade crossings and the associated signs and structures will enhance public safety by eliminating distractions to vehicular traffic crossing the Line.

(ii) The proposed abandonment will not affect the transportation of hazardous materials.

(iii) There are no known hazardous material waste sites or sites where known hazardous material spills have occurred on or along the rail corridor of the Line.

(8) Biological Resources. (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects. (ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

(i) The proposed abandonment will not have an adverse affect on endangered or threatened species or areas designated as a critical habitat. VSR notified the U.S. Fish and Wildlife Service of the proposed abandonment and requested assistance in determining whether endangered or threatened species or areas designated as a critical habitat are likely to be

adversely affected. See Exhibit 4. The Service concluded that “there should be no adverse impacts to fish and wildlife resources, including threatened and endangered species” as a result of the proposed abandonment. See Exhibit 4. A copy of this Report is being supplied to the U.S. Fish and Wildlife Service for its information and further comment.

(ii) VSR does not believe that any wildlife sanctuaries or refuges, National or State parks or forests would be adversely affected by the proposed abandonment. VSR notified the National Parks Service of the proposed abandonment and requested assistance in identifying any potential effects on wildlife sanctuaries or refuges, National or State parks or forests. See Exhibit 5. To date, no response to this request has been received. A copy of this Report is being supplied to the National Park Service for its information and comment.

(9) Water. (i) *Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.* (ii) *Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.* (iii) *State whether permits under section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action.*

(i) VSR is confident that the proposed abandonment will be consistent with applicable water quality standards. VSR contacted the Kansas Department of Health and Environment and the U.S. Environmental Protection Agency concerning this matter requesting assistance in determining whether the proposed abandonment is consistent with applicable Federal, State, or local water quality standards. See Exhibit 6. To date, no response to these requests has been received. A copy of this Report is being supplied to the U.S. Environmental Protection Agency and the Kansas Department of Health and Environment for their information and comment.

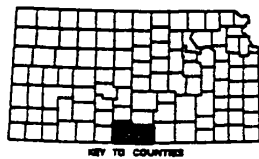
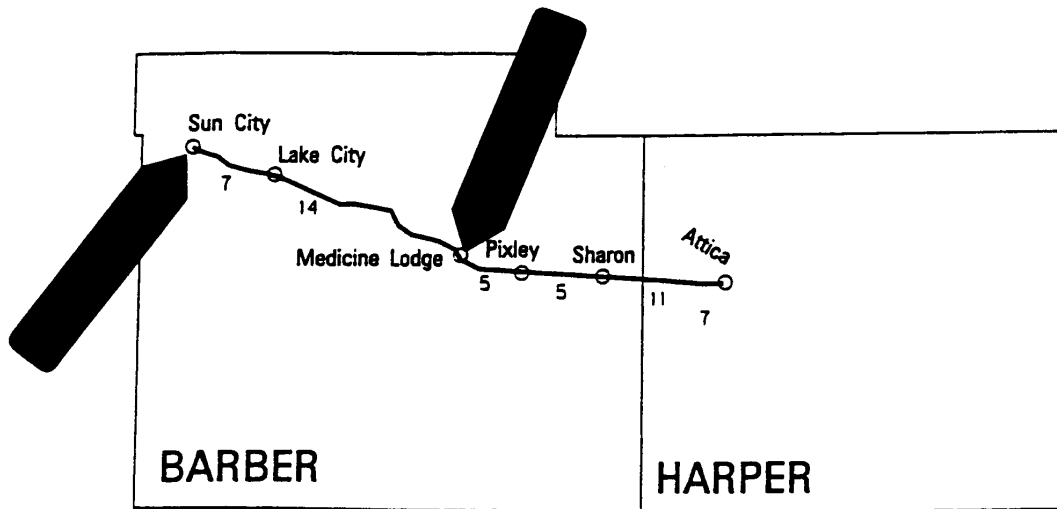
(ii) No designated wetlands or 100-year flood plains will be adversely affected by the proposed abandonment. VSR contacted the Corps of Engineers concerning these matters. See Exhibit 7. The Corps of Engineers has determined that the proposed abandonment is not subject to regulation pursuant to Section 404 and no Department of Army permit will be required. See Exhibit 7. Consistent with the Corps' suggestion, VSR will verify whether any other Federal, state and/or local permits may be required. A copy of this Report is being supplied to the U.S. Army Corps of Engineers for its information and further comment.

(iii) VSR believes the proposed abandonment will not require the issuance of any permits under Section 402 of the Clean Water Act. VSR contacted the U.S. Environmental Protection Agency concerning this matter and requested assistance in identifying any potential effects on applicable water quality standards and determining whether the proposed abandonment is consistent with applicable Federal, State, or local water quality standards. See Exhibit 6. To date, no response to this request has been received. A copy of this Report is being supplied to the U.S. Environmental Protection Agency for its information and comment.

(10) Proposed Mitigation. Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

VSR does not expect any adverse environmental impact from the proposed abandonment and, therefore, sees no need for any mitigating actions. VSR will, of course, adhere to any remedial actions suggested by the recipients of this Report and required by the Board.

V and S Railway



V and S Railway, Inc.

P.O. Box 26421
Salt Lake City, UT 84126
(801) 974-0110 • (801) 972-2041 FAX

April 10, 2002

Board of County Commissioners
Barber County
205 West Central, 4th Floor
El Dorado, KS 67042

**RE: Docket No. AB-603 (Sub-No. 1X), V and S Railway, Inc.--
Abandonment Exemption—In Barber County, Kansas**

Dear Sir/Madam:

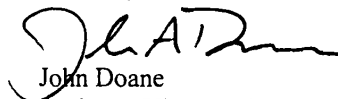
V and S Railway, Inc., ("VSR") is planning to file a Petition for Exemption with the Surface Transportation Board ("STB"), on or about June 10, 2002, for VSR to abandon approximately 20.34 miles of rail line located between milepost 20.66, at Medicine Lodge, and milepost 41.0, at Sun City, in Barber County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on existing land use plans. We must determine whether the proposed abandonment is inconsistent with existing land use plans.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,



John Doane
Assistant Vice President
V and S Railway, Inc.

V and S Railway, Inc.
P.O. Box 26421
Salt Lake City, UT 84126
(801) 974-0110 • (801) 972-2041 FAX

April 10, 2002

State Conservationist
USDA Soil Conservation Service
760 South Broadway
Salina, KS 67401

**RE: Docket No. AB-603 (Sub-No. 1X), V and S Railway, Inc.--
Abandonment Exemption—In Barber County, Kansas**

Dear Sir/Madam:

V and S Railway, Inc., ("VSR") is planning to file a Petition for Exemption with the Surface Transportation Board ("STB"), on or about June 10, 2002, for VSR to abandon approximately 20.34 miles of rail line located between milepost 20.66, at Medicine Lodge, and milepost 41.0, at Sun City, in Barber County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on prime agricultural land.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,



John Doane
Assistant Vice President
V and S Railway, Inc.



**United States Department of Agriculture
Natural Resources Conservation Service**

9 West 28th
Hutchinson, KS 67502-3453

Phone: 620-663-3501
FAX: 620-663-3866
www.ks.nrcs.usda.gov

May 13, 2002

Mr. John Doane
V and S Railway, Inc
P.O. Box 26421
Salt Lake City, Utah 84126

Dear Mr. Doane:

Thank you for the opportunity to review the abandonment of 20.34 miles of rail line located between milepost 20.66, at Medicine Lodge and milepost 41.0, at Sun City, in Barber County, Kansas.

Because the project is the abandoning of a project, there are no negative impacts to important farmland as defined by the Farmland Protection Policy Act. I see no adverse environmental effects for which the Natural Resources Conservation Service is responsible for evaluating.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jess F. Crockford".

JESS F. CROCKFORD
Assistant State Conservationist

cc:
Harold L. Klaege, State Conservationist, NRCS, Salina, Kansas
Rodney D. Egbarts, Soil Conservationist, NRCS, Salina, Kansas
Harold E. Kline, District Conservationist, NRCS, Medicine Lodge, Kansas

V and S Railway, Inc.
P.O. Box 26421
Salt Lake City, UT 84126
(801) 974-0110 • (801) 972-2041 FAX

April 10, 2002

U.S. Fish and Wildlife Service
P.O. Box 25486
Denver Federal Center
Denver, CO 80225

**RE: Docket No. AB-603 (Sub-No. 1X), V and S Railway, Inc.--
Abandonment Exemption—In Barber County, Kansas**

Dear Sir/Madam:

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Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in determining whether it is likely to adversely affect endangered or threatened species or areas designated as a critical habitat.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,



John Doane
Assistant Vice President
V and S Railway, Inc.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Kansas Field Office

315 Houston Street, Suite E
Manhattan, Kansas 66502-6172

May 7, 2002

John Doane
Assistant Vice President
V and S Railway, Inc.
P.O. Box 26421
Salt Lake City, Utah 84126

RE: Docket No. AB-603 (Sub-No. 1X)

Dear Mr. Doane:

I was forwarded your letter of April 10, 2002, which was sent to our Denver Regional Office, describing a proposed abandonment of over 20 miles of existing railway line between Medicine Lodge and Sun City, in Barber County, Kansas. We have reviewed this proposal and conclude that there should be no adverse impacts to fish and wildlife resources, including threatened and endangered species. Therefore, the U.S. Fish and Wildlife Service has no objection to your proposals as planned.

The Service encourages V and S Railway, Inc. to keep the right-of-way in a natural condition for the benefit of native wildlife, plants, and the public. You may wish to contact the National Park Service, Omaha, Nebraska, 402-221-3350, for more information on the "Rails to Trails" Program. You may also wish to contact the Kansas Department of Wildlife and Parks in Pratt, Kansas (316-672-5911) to determine their interest in acquiring a nature trail.

In the future, please direct all inquiries regarding Kansas projects to this office, rather than going through our Denver office. This should help eliminate unnecessary delays in our response. Thank you for this opportunity to comment on your proposal.

Sincerely,

William H. Gill
Field Supervisor

cc: KDWP, Pratt, KS (Environmental Services)

WHG/dwm

V and S Railway, Inc.

Exhibit 5

P.O. Box 26421
Salt Lake City, UT 84126
(801) 974-0110 • (801) 972-2041 FAX

April 10, 2002

National Park Service
Recreational Resources Assistance Division
P.O. Box 37127
Washington, D.C. 20013-7127

**RE: Docket No. AB-603 (Sub-No. 1X), V and S Railway, Inc.--
Abandonment Exemption—In Barber County, Kansas**

Dear Sir/Madam:

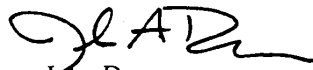
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Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on wildlife sanctuaries or refuges, National or State parks or forests.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,



John Doane
Assistant Vice President
V and S Railway, Inc.

V and S Railway, Inc.

Exhibit 6

P.O. Box 26421
Salt Lake City, UT 84126
(801) 974-0110 • (801) 972-2041 FAX

April 10, 2002

Department of Health and Environment
Division of Environment
Landon State Office Building
901 S.W. Jackson Street
Topeka, KS 66612

**RE: Docket No. AB-603 (Sub-No. 1X), V and S Railway, Inc.--
Abandonment Exemption—In Barber County, Kansas**

Dear Sir/Madam:

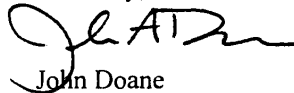
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Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on applicable water quality standards. We also seek your assistance in determining whether the proposed abandonment is consistent with applicable Federal, State or local water quality standards. VSR does not believe any permits under Section 402 of the Clean Water Act will be required.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,



John Doane
Assistant Vice President
V and S Railway, Inc.

V and S Railway, Inc.

P.O. Box 26421
Salt Lake City, UT 84126
(801) 974-0110 • (801) 972-2041 FAX

April 10, 2002

U.S. Environmental Protection Agency
726 Minnesota Avenue
Kansas City, KS 66101

**RE: Docket No. AB-603 (Sub-No. 1X), V and S Railway, Inc.--
Abandonment Exemption—In Barber County, Kansas**

Dear Sir/Madam:

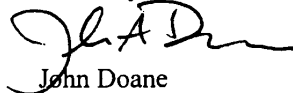
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Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on applicable water quality standards. We also seek your assistance in determining whether the proposed abandonment is consistent with applicable Federal, State or local water quality standards. VSR does not believe any permits under Section 402 of the Clean Water Act will be required.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,



John Doane
Assistant Vice President
V and S Railway, Inc.

V and S Railway, Inc.

Exhibit 7

P.O. Box 26421
Salt Lake City, UT 84126
(801) 974-0110 • (801) 972-2041 FAX

April 10, 2002

U.S. Army Engineer District, Kansas City
2710 N.E. Shady Creek Access Road
El Dorado, Kansas 67042

**RE: Docket No. AB-603 (Sub-No. 1X), V and S Railway, Inc.--
Abandonment Exemption—In Barber County, Kansas**

Dear Sir/Madam:

V and S Railway, Inc., ("VSR") is planning to file a Petition for Exemption with the Surface Transportation Board ("STB"), on or about June 10, 2002, for VSR to abandon approximately 20.34 miles of rail line located between milepost 20.66, at Medicine Lodge and milepost 41.0, at Sun City, in Barber County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on designated wetlands or 100-year flood plains. VSR does not believe any permits under Section 404 of the Clean Water Act will be required.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,



John Doane
Assistant Vice President
V and S Railway, Inc.



DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
STATE REGULATORY PROGRAM OFFICE - KANSAS
2710 N.E. SHADY CREEK ACCESS ROAD
EL DORADO, KANSAS 67042

REPLY TO
ATTENTION OF:

April 16, 2002

Kansas State Regulatory Office
(200201233)
(Barber, KS, NPR)

Mr. John Doane
V and S Railway, Inc.
P. O. Box 26421
Salt Lake City, Utah 84126

Dear Mr. Doane:

This is in response to your letter received on April 15, 2002, requesting a Department of the Army (DA) permit determination concerning abandonment of approximately 20.34 miles of rail line from Sun City, KS to Medicine Lodge, KS. The project is located adjacent to the Medicine Lodge River. The project originates in Section 2, Township 31 south, Range 15 west, and terminates in Section 12, Township 32 south, Range 12 west, all in Barber County, Kansas.

The Corps of Engineers has jurisdiction over all waters of the United States. Discharges of dredged or fill material in waters of the United States, including wetlands, require prior authorization from the Corps under Section 404 of the Clean Water Act (33 USC 1344). The implementing regulation for this Act is found at 33 CFR 320-330.

The enclosed Jurisdictional Determination (JD) form describes the extent of waters of the United States on the project site. Also, the enclosed Notification of Administrative Appeal Options and Process and Request for Appeal form (FORM) describes your options in Section E of the FORM.

We have reviewed the information furnished and have determined that the proposed activity will not involve the discharge of dredged or fill material in waters of the United States. Therefore, Department of the Army permit authorization is not required. Other Federal, state and/or local permits may be required, however, and you should verify this yourself.

Ms. Shannon J. Warner, Regulatory Specialist, reviewed the information furnished and made this determination. If you have any questions concerning this matter, please feel free to contact Ms. Warner at 316-322-8247 (FAX 316-322-8259).

2 Enclosures

Copies Furnished:

Environmental Protection Agency,
Water Resources Protection Branch wo/enclosure

Kansas Department of Wildlife
and Parks wo/enclosure

Kansas Department of Agriculture wo/enclosure

Kansas Department of Health and Environment
wo/enclosure

JURISDICTIONAL DETERMINATION
U.S. Army Corps of Engineers, Kansas City District

APPLICANT: V And S Railway, Inc. NUMBER: 200201233

LOCATION/WATERWAY: Barber Co., KS / Adjacent to Medicine Lodge River

PROJECT REVIEW COMPLETED: ☒ Office ☐ Field

JURISDICTIONAL DETERMINATION (JD):

- ☒ Preliminary JD – Based on available information, there appear to be no waters of the U.S. on the project site. A preliminary JD is not appealable.
- ☐ Approved JD – There are waters of the United States on the project site. An approved JD is an appealable action (unless prepared by the U.S. Environmental Protection Agency (USEPA) or the Natural Resources Conservation Service (NRCS)).

BASIS FOR JURISDICTIONAL DETERMINATION:

- ☒ There are no jurisdictional waters of the U.S. present on the project site.
- ☐ The presence of waters which are currently used, or were used in the past, or may be susceptible for use to transport interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide (i.e., navigable waters of the U.S).
- ☐ The presence of interstate waters (including interstate wetlands¹).
- ☐ The presence of a tributary to an interstate water or other water of the U.S.
- ☐ Impoundments of interstate or other waters of the U.S. or their tributaries.
- ☐ The presence of territorial seas.
- ☐ The presence of wetlands adjacent² to interstate or other waters of the U.S., except for those wetlands adjacent to other wetlands.
- ☐ The presence of an isolated water (i.e., intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds).
- ☐ The site is used by interstate or foreign travelers for recreational purposes.
- ☐ The site has fish or shellfish that are taken and sold in interstate or foreign commerce.
- ☐ The site is used for industrial purposes by industries in interstate commerce.
- ☐ Other: _____

Rationale for Basis (applies to any boxes checked above): Project will not impact any waters of the U.S.

Lateral Extent of Jurisdiction (33 CFR 328 and 329):

- | | |
|--|--|
| <p>☐ Ordinary High Water Mark indicated by:</p> <ul style="list-style-type: none">☐ clear, natural line impressed on the bank☐ the presence of litter and debris☐ changes in the character of soil☐ destruction of terrestrial vegetation☐ shelving☐ other (hydrologic study, etc.): _____ | <p>☐ High Tide Line indicated by:</p> <ul style="list-style-type: none">☐ oil or scum line along shore objects☐ fine shell or debris deposits (foreshore)☐ physical markings/characteristics☐ tide gages☐ other: _____ |
|--|--|
- ☐ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types
- ☐ In ocean or coastal area, site is in a zone three geographic (nautical) miles seaward of the baseline³
- ☐ Wetland, as shown on the attached wetland delineation map, and/or in a jurisdictional report prepared by _____, and dated _____.
- ☐ Additional supporting information attached and/or multiple JD forms completed for sites with multiple water categories.

Preparer: Environmental Protection Specialist, Shannon Warner Date: 16 April 2002

¹ Wetlands are identified and delineated using the methods and criteria established in the 1987 Corps of Engineers Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology). Processes for determining wetlands on agricultural lands may vary from methods described in the 87 Manual.

² The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

³ Baseline is the line on the shore reached by the ordinary low tides from which the distance of three miles is measured.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: <i>Vand S Railway, Inc.</i>	File Number: <i>210201233</i>	Date: <i>4/16/02</i>
Attached is:		See Section below
INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
PROFFERED PERMIT (Standard Permit or Letter of permission)		B
PERMIT DENIAL		C
APPROVED JURISDICTIONAL DETERMINATION		D
☒ PRELIMINARY JURISDICTIONAL DETERMINATION		☒ E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

ENTERED
Office of Proceedings

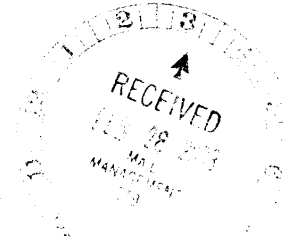
EXHIBIT C

HISTORIC REPORT

(49 C.F.R. 1105.8)

Docket No. AB-603 (Sub-No. 1X)

**V AND S RAILWAY, INC.
--ABANDONMENT EXEMPTION--
IN BARBER COUNTY, KANSAS**



The Historic Report should contain the information required by 1105.7(e)(1) of the Environmental Report. The following is excerpted from the Environmental Report prepared for the proposed abandonment:

(1) Proposed Action and Alternatives. Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

V and S Railway, Inc. ("VSR"), proposes to abandon the 20-mile section of its rail line located between milepost 21.0,¹ at Medicine Lodge, and milepost 41.0, at Sun City, in Barber County, Kansas (the "Line"). Upon receipt of abandonment authority, VSR intends to remove the rail, track material, and cross-ties. There are currently no plans to remove any of the bridge structures along the Line.

VSR acquired the Line in 2000 from Central Kansas Railway, L.L.C.² The only traffic that has moved over the Line since it was acquired by VSR is gypsum rock. In December of 2000, VSR handled 24 carloads; during 2001, it handled 636 carloads; and between January 1st

¹ At the time VSR sent out its consultation letters, it had planned on abandoning its rail line from milepost 20.66. Since that time, VSR has changed its mind and now intends on keeping active the segment between milepost 20.66 and milepost 21.0 in order to preserve the option of serving a potential customer located on that segment.

and April 30, 2002, it handled 217 carloads. Since April 30, 2002, no local traffic has moved over the Line. Since the Line is stub-ended, no overhead traffic moves over the Line.

The Line has had limited traffic in recent years and no traffic in almost a year. In addition, very little maintenance has been performed. Therefore, the proposed abandonment will have limited impact on rail freight operations and maintenance practices on the Line. Because of the low traffic volume on the Line in recent years, VSR was incurring substantial operating losses on the Line. The Line is in poor condition. Significant rehabilitation and maintenance costs will be necessary in the near future in order to continue rail operations over the Line. Given that no traffic has moved in nearly a year and given the low volume of traffic in previous years, there is no possibility that these expenditures can be recovered.

The only alternative to abandonment would be not to abandon the Line and forcing VSR to pass the opportunity costs of retaining the Line to other VSR customers. This would not be a prudent use of carrier resources.

A map of the proposed abandonment is attached hereto as Exhibit 1.

HISTORIC REPORT

1. *A U.S.G.S. topographic map (or alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action;*

² See STB Docket No. 33964, *V and S Railway, Inc. – Acquisition and Operation Exemption – Central Kansas Railway, L.L.C.* (not printed), served December 7, 2000.

A map and the identification of all structures on the Line that are 50 years old or older have been supplied to the Kansas State Historical Society ("KSHS"). See Exhibit 2.³

2. *A written description of the right of way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area;*

The right-of-way is predominately 100 feet in width. The 20-mile rail line is located between Medicine Lodge and Sun City, and traverses a predominately flat, rural area in Barber County, Kansas, beginning at milepost 21, at Medicine Lodge, and running generally in a northwesterly direction through Lake City to milepost 41.0, at Sun City.

3. *Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediate surrounding area;*

The only structures on the Line associated with the proposed abandonment that are, or potentially are, 50 years old or older are 35 bridges. Two of the bridges are of unknown age. Photographs of the bridges have been supplied to the KSHS. See Exhibit 2.

4. *The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known;*

There are 35 bridges located on the Line which may be fifty years old or older. Two of the bridges are of unknown age and the other 33 bridges were constructed between 1913 and 1950. See Exhibit 3. VSR is not in possession of any engineering documents regarding the maintenance or repairs of these bridges.

³ Since VSR has decided not to abandon the line segment between milepost 20.66 and milepost 21.0, two of the bridges identified to KSHS as being within the project area are no longer, namely the bridges at mileposts 20.8 and 20.9. A revised bridge list is attached as Exhibit 3.

5. *A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;*

The 20-mile line between Medicine Lodge and Sun City was originally graded by the Harper and Western Railroad Company around 1886. The Denver, Kansas and Gulf Railway Company laid the track in 1906. Since the Line was acquired by VSR in 2000, it has been used to haul gypsum rock from a mine in Sun City to National Gypsum's plant in Medicine Lodge.

The Line is in poor condition and has seen only limited freight operations in recent years. In order to continue freight operations, significant rehabilitation would be required. Given the limited volume of traffic that has moved over the Line in recent years, rehabilitation cannot be economically justified. Because no traffic has moved on the Line in nearly a year, no changes to current transportation patterns are anticipated upon the abandonment of the Line.

6. *A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic;*

There are no available individual drawings for the 35 bridges on the Line. Each of the bridges is quite common in design and construction and is of no historical significance. They are typical of many bridges found throughout North America.

7. *An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);*

The 35 bridges are quite common in design and construction. None has any historical significance as to the history of railroad construction or operation. These are common structures

found on numerous railroads throughout North America. There are also no known archeological resources in the project area. Attached as Exhibit 4 is the response VSR received from the KSHS. According to the KSHS, the abandonment of the Line will not affect any property listed on or eligible for listing on the National Register of Historic Places.

8. *A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic waste), and the surrounding terrain.*

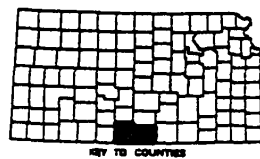
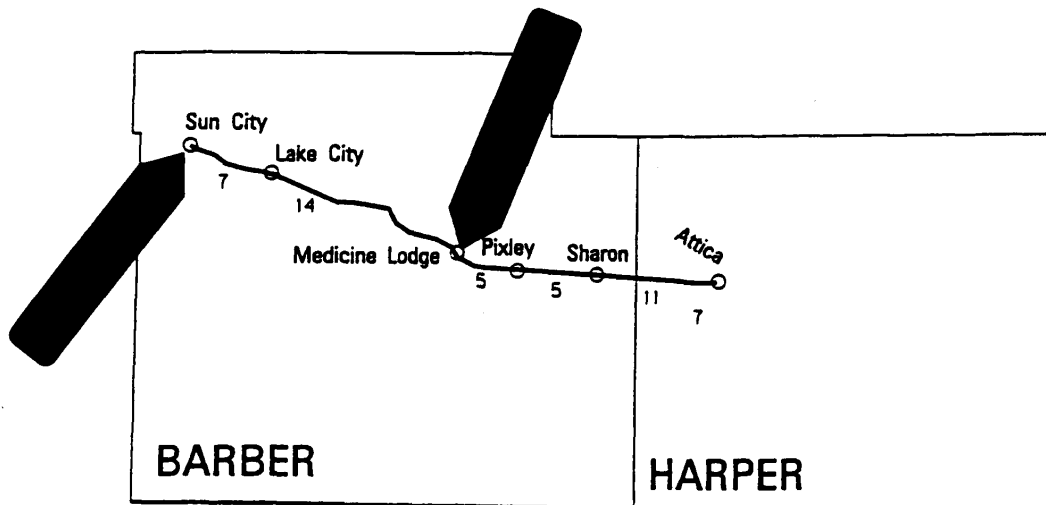
There are no existing records as to the nature of any known subsurface ground disturbance or fill, or environmental condition that might affect the archeological recovery of any potential resources.

9. *Within 30 days of receipt of the historic report, the State Historic Preservation Officer may request the following additional information regarding specific non railroad owned properties or groups of properties immediately adjacent to the railroad right-of-way: photographs of specified properties that can be readily seen from the railroad right-of-way (or other public rights-of-way adjacent to the property) and a written description of any previously discovered archeological sites, identifying the location and type of the site (i.e. prehistoric or native American).*

VSR does not foresee the likelihood that any additional information will need to be supplied in association with the proposed line abandonment other than that information previously submitted. But, if any additional information is requested, VSR will promptly supply the necessary information.

EXHIBIT 1

V and S Railway



V and S Railway, Inc.

P.O. Box 26421
Salt Lake City, UT 84126
(801) 974-0110 • (801) 972-2041 FAX

April 10, 2002

Kansas State Historical Society
6425 S.W. 6th Avenue
Topeka, KS 66615-1099

**RE: Docket No. AB-603 (Sub-No. 1X), V and S Railway, Inc.--
Abandonment Exemption—In Barber County, Kansas**

Dear Sir/Madam:

V and S Railway, Inc., ("VSR") is planning to file a Petition for Exemption with the Surface Transportation Board ("STB"), on or about June 10, 2002, for VSR to abandon approximately 20.34 miles of rail line located between milepost 20.66, at Medicine Lodge, and milepost 41.0, at Sun City, in Barber County, Kansas. United States Geological Survey maps of the proposed abandonment are attached.

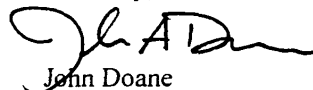
Enclosed is a map depicting the area where the rail line is located. The proposed abandonment will involve the removal of the rail, track material, and crossties; however, there are currently no plans to remove any existing structures along the track.

The rail line segment VSR seeks to abandon is located in the State of Kansas. The 20.34 mile line lies in Barber County. That line begins at milepost 20.66, at Medicine Lodge, and extends generally in a westerly direction to milepost 41.0, at Sun City. The line crosses through predominately flat, rural areas.

There are thirty-seven bridges, two of which are unknown in age, on the rail line between Medicine Lodge and Sun City. Descriptions of the bridges and their milepost locations are attached. Photographs of each structure will also be sent to your Department within the next ten days. These bridges are quite common in design and construction and in VSR's view have no historical significance.

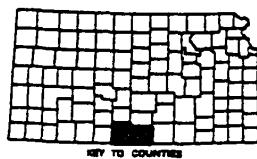
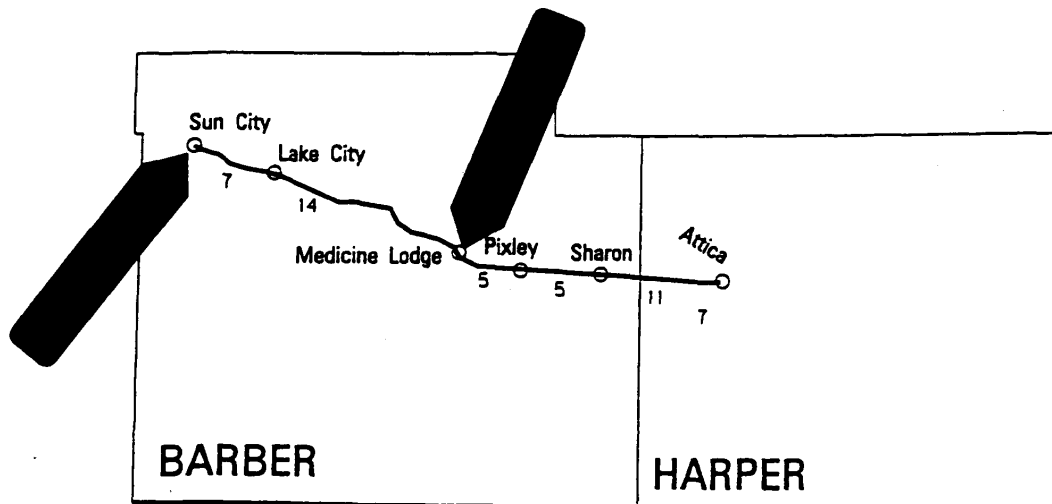
We will send you a copy of the Historic Report as soon as it is completed. If I can of further assistance regarding this matter, please call me at (801) 977-6343.

Sincerely,



John Doane
Assistant Vice President
V and S Railway, Inc.

V and S Railway



V and S Railway Bridge List

<i>Milepost</i>	<i>Length (ft.)</i>	<i>Type</i>	<i>Date Constructed</i>
20.8	42	Open Deck Pile Trestle	1916
20.9	70	Open Deck Pile Trestle	1950
21.1	42	Open Deck Pile Trestle	1919
21.6	110	Open Deck Pile Trestle	1918
22.4	14	Open Deck Pile Trestle	1919
22.7	195	Open Deck Pile Trestle	1915
23.7	42	Open Deck Pile Trestle	1907
24.9	81	Open Deck Pile Trestle	1913
25.5	305	Open Deck Pile Trestle	1920
26.1	28	Open Deck Pile Trestle	1919
26.7	83	Open Deck Pile Trestle	1918
27.4	28	Open Deck Pile Trestle	1918
27.9	42	Open Deck Pile Trestle	1920
28.6	70	Open Deck Pile Trestle	1919
28.9	84	Open Deck Pile Trestle	1942
29.6	28	Open Deck Pile Trestle	1919
30.1	223	Open Deck Pile Trestle	1918
30.7	42	Open Deck Pile Trestle	1919
31	70	Open Deck Pile Trestle	1919
31.4	28	Open Deck Pile Trestle	1915
32	56	Open Deck Pile Trestle	1915
32.3	112	Open Deck Pile Trestle	1918
32.9	42	Open Deck Pile Trestle	1915
33.3	265	Open Deck Pile Trestle	1918
33.8	42	Open Deck Pile Trestle	1919
34.3	14	Ballast Deck Pile Trestle	1926
34.8	42	Open Deck Pile Trestle	1919
35.1	138	Open Deck Pile Trestle	1915
35.3	56	Open Deck Pile Trestle	
35.7	112	Open Deck Pile Trestle	1933
36.7	98	Open Deck Pile Trestle	
37.8	166	Open Deck Pile Trestle	1918
38.3	56	Open Deck Pile Trestle	1919
38.8	56	Open Deck Pile Trestle	1918
39.44	19	Open Deck Pile Trestle	1917
40	249	Open Deck Pile Trestle	1950
40.9	42	Open Deck Pile Trestle	1930

EXHIBIT 3**V and S Railway Bridge List**

<i>Milepost</i>	<i>Length (ft.)</i>	<i>Type</i>	<i>Date Constructed</i>
21.1	42	Open Deck Pile Trestle	1919
21.6	110	Open Deck Pile Trestle	1918
22.4	14	Open Deck Pile Trestle	1919
22.7	195	Open Deck Pile Trestle	1915
23.7	42	Open Deck Pile Trestle	1907
24.9	81	Open Deck Pile Trestle	1913
25.5	305	Open Deck Pile Trestle	1920
26.1	28	Open Deck Pile Trestle	1919
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28.6	70	Open Deck Pile Trestle	1919
28.9	84	Open Deck Pile Trestle	1942
29.6	28	Open Deck Pile Trestle	1919
30.1	223	Open Deck Pile Trestle	1918
30.7	42	Open Deck Pile Trestle	1919
31	70	Open Deck Pile Trestle	1919
31.4	28	Open Deck Pile Trestle	1915
32	56	Open Deck Pile Trestle	1915
32.3	112	Open Deck Pile Trestle	1918
32.9	42	Open Deck Pile Trestle	1915
33.3	265	Open Deck Pile Trestle	1918
33.8	42	Open Deck Pile Trestle	1919
34.3	14	Ballast Deck Pile Trestle	1926
34.8	42	Open Deck Pile Trestle	1919
35.1	138	Open Deck Pile Trestle	1915
35.3	56	Open Deck Pile Trestle	
35.7	112	Open Deck Pile Trestle	1933
36.7	98	Open Deck Pile Trestle	
37.8	166	Open Deck Pile Trestle	1918
38.3	56	Open Deck Pile Trestle	1919
38.8	56	Open Deck Pile Trestle	1918
39.44	19	Open Deck Pile Trestle	1917
40	249	Open Deck Pile Trestle	1950
40.9	42	Open Deck Pile Trestle	1930



*KANSAS
STATE
HISTORICAL
SOCIETY*

◆
Richard Pankratz
Director
Cultural Resources
Division
tel. ext. 217

◆
6425 S.W. 6th Avenue
Topeka, Kansas
66615-1099
PHONE# (913) 272-8681
FAX# (913) 272-8682
TTY# (913) 272-8683

◆
KANSAS HISTORY CENTER

Administration
Center for Historical Research
Cultural Resources
Education / Outreach
Historic Sites
Kansas Museum of History
Library & Archives

HISTORIC SITES

Adair Cabin
Constitution Hall
Cottonwood Ranch
First Territorial Capitol
Fort Hays
Goodnow House
Grinter Place
Hollenberg Station
Kaw Mission
Marais des Cygnes Massacre

April 30, 2002

Surface Transportation Board
Section of Environmental Analysis (SEA)
1925 K Street, N.W., Room 504
Washington, D.C. 20423-0001

RE: Docket No. AB-603 (Sub-No. 1X), V and S Railway, Inc.—
Abandonment Exemption—In Barber County, Kansas

Dear Sir/Madam:

We have reviewed the proposal by V and S Railway, Inc., to abandon 20.34 miles of rail line located between milepost 20.66 at Medicine Lodge and milepost 41.0 at Sun City, all in Barber County, Kansas. The proposed abandonment will not affect any property presently listed on the National Register of Historic Places nor any property that is eligible for such listing.

Sincerely yours,

Jennie A. Chinn
State Historic Preservation Officer

Richard Pankratz

Richard Pankratz
Director, Cultural Resources Division

cc: V and S Railway, Inc.